



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF MULTIFAMILY HOUSING ASSISTANCE RESTRUCTURING

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To: All PAEs  
Owners of Mark-to-Market Properties  
OMHAR Relationship Managers

CC: OMHAR Regional Office Directors

From: Ira G. Peppercorn, Director of OMHAR

Date: September 11, 2000

Re: Owner Participation in the Mark-to-Market Restructuring Process

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The Mark to Market Program has closed the first full debt restructuring transaction and anticipate 20 - 30 additional debt restructuring closings within the next two months. Over 400 deals have been completed to date. While much has been accomplished, , concerns have been raised about the level of interaction between owners and PAEs in the Mark-to-Market (M2M) restructuring process.

These concerns have two dimensions. First, PAEs report that some owners are submitting inadequate, or inaccurate, information, and that some owners are not submitting information on a timely basis. Second, some owners report dissatisfaction with their PAEs' level of communication and interaction, particularly regarding PAE conclusions on market rents and physical needs.

OMHAR insists on candid, accurate, timely, two way communication between owners and PAEs, throughout the development of Restructuring Plans and Lites, and in particular concerning the PAE's conclusions. Owners should be communicating with PAEs, limited partners, legal / tax / financial advisors, and sources of potential takeout financing early and throughout the process. Likewise, PAEs should be providing appropriate information to owners throughout the process.

OMHAR will be issuing a revised and streamlined Operating Procedures Guide this month. The revised Guide will clarify these responsibilities. Some key structural modifications to the program which have been made to facilitate successful restructurings are detailed in an "Owner and Purchaser Initiative Matrix" The financial initiatives are intended to improve the economics of M2M deals for stay in owners and potential purchasers. This bulletin as well as the matrix, highlighting these initiatives, will be posted on OMHAR's Web site ([www.hud.gov/omhar](http://www.hud.gov/omhar)) on 9/18/00. Additionally, the revised Guide will reflect the following clarifications, to provide for improved two way communication between owners and PAEs and OMHAR:

- **Processing Status Available Via E-Mail.** OMHAR has established an e-mail address for owners to check the status of assignment of their properties to PAE's and the expected completion date. Its address is "m2minfo@hud.gov." Please title all inquiries regarding the status of the project in M2M "Project Status" in the Email "Subject" box. The box will be staffed and operational on 9/18/00. We will respond to status inquiries within 48 hours. Inquiries about the substance of processing should be directed to the PAE. Inquiries about PAE performance or conclusions should be addressed to the OMHAR Regional Office, where they will be addressed by the OMHAR Relationship Manager who works with that PAE.
- **Portfolio Status Available on OMHAR Web Site.** As of 9/18/00, OMHAR will post weekly reports on its Web site ([www.hud.gov/omhar](http://www.hud.gov/omhar)). The "Summary Report" will be a summary report, detailing receipts, assignments, and completions by type: comp review, rent restructuring, debt restructuring. The "Assigned Property Report" will provide asset-level details by PAE and state, including type of transaction, assignment date, and whether the project is still in M2M or has been completed. Both reports will be updated on a weekly basis.

- **Standardized Owner Appeal Process.** The Operating Procedures Guide was revised in June 2000 to standardize the appeal process for Lites. The revision will reflect a similar standardized appeal process for debt restructuring transactions. The appeal process provides information to Owners that is sufficient to establish the basis for the PAE's conclusions. The appeal process also allows adequate time for Owners to present appeals. When an Owner files a written appeal, the process provides for review by staff who were not involved in the original decision.
- **Appeal Response Facilitation.** Through December 15, if an owner has filed a written appeal and has not received a response within the appropriate timeframe, please submit an E-mail to "m2minfo@hud.gov" titled "Appeal" in the Email "Subject" box. The box will be staffed and operational on 9/18/00. A contact person at OMHAR Headquarters will obtain a response from the field staff handling the appeal within three business days (72 business hours) of the E-mail's receipt.
- **Provision of Information to Owners During Processing.** The Operating Procedures Guide will be revised to clarify that PAE's are expected to interact with Owners throughout the process. In particular, when information from the Owner is significantly inconsistent with data from other sources, OMHAR encourages PAEs to discuss such data with the Owner. For both Lites and full debt restructuring transactions, PAEs should obtain an extra copy of the appraisal and PCA from their due diligence contractors (or make copies) and provide a copy to the Owner within 30 days of PAE acceptance of the report. If the PAE completes its analysis of the report earlier than 30 days, OMHAR encourages the PAE to send the copy to the Owner as soon as the PAE's analysis is complete. Note that the reports and conclusions are subject to OMHAR review and approval, however the preliminary due diligence should facilitate owner participation.
- **Provision of PAE Conclusions to Owners.** When the PAE transmits its conclusions to the Owner, the PAE will include all of the following: a copy of the appraisal (if not provided earlier), a copy of the PCA (if not provided earlier), and relevant portions of the PAE's submission to OMHAR. This would always include the PAE's market rent analysis and narrative, and the PAE's physical condition analysis and narrative. For Lites, the PAE's analysis of DSCR will be provided to owners. For full restructures, PAEs will provide appropriate pages from the financial model so that the Owner can determine the basis for the PAE's conclusions.
- **Face to Face Meeting.** Some transactions will raise issues that are difficult to solve via remote communication. In such situations, when owners request a face to face meeting, OMHAR strongly encourages PAEs to agree to such a meeting. Through December 15, if a PAE refuses an owner request for a meeting, please send an E-mail to "m2minfo@hud.gov" titled "Request for Meeting" in the Email "Subject" box. The box will be staffed and operational on 9/18/00. If the PAE has declined to meet with the owner, OMHAR will contact the owner to arrange for a face to face meeting with appropriate OMHAR staff, either at OMHAR Headquarters or at the appropriate OMHAR Regional Office, at OMHAR's option.
- **Standard For Evaluating PAE Conclusions.** The revised Guide will clarify that PAEs perform independent analysis, using historical data, data from the Owner, and data from third party professional reports (such as appraisals and PCAs) as background information for further analysis. The PAE's obligation to OMHAR is to present conclusions that are reasonable and adequately supported. If the Owner believes that a PAE conclusion is not reasonable, or is not adequately supported, that is a proper basis for appeal. If the Owner believes that a PAE conclusion is reasonable and adequately supported, but the Owner favors a different – also reasonable – conclusion, the Owner is entitled to file an appeal on that basis, but OMHAR will not necessarily grant such an appeal. For rent restructuring transactions ("Lites"), if the PAE's market rent conclusion is reasonable and adequately supported, OMHAR is likely to deny owner appeals favoring a different – also reasonable – market rent conclusion. For debt restructuring transactions, OMHAR will focus on the reasonableness of the overall transaction, recognizing that it is possible to produce an unreasonable overall result, using reasonable conclusions on various aspects of the transaction.

We appreciate your ongoing cooperation in this important endeavor to maintain the long term physical, financial, and managerial integrity of the Section 8 assisted FHA-insured portfolio. Please contact me or my staff if you have any questions about this memorandum. Thank you.